



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

7500 Security Boulevard
Baltimore, Maryland 21244

DATE: May 4, 2005

TO: Medicare Advantage Organizations
Section 1876 Cost-based Contractors
Demonstrations

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SUBJECT: Bid Withdrawal Policy for MA plans

CMS has received a number of inquiries in regard to multiple bid submission and possible withdrawal of bids. The following Q & A is in response to these questions. This information will also be posted on the CMS website.

Question: *Can Part D plan sponsors, including MA-PD plans, submit more than one bid (or formulary) for basic benefit packages, and can they subsequently withdraw some, or all of them?*

Answer: The MMA does not prohibit organizations from submitting multiple bids, nor does it disallow bid withdrawals. We anticipate that, especially in year one, there may be a business case for submitting multiple bids and packages for basic benefits. Certain variations in benefit design and management may be reasonable since the benefit design preferences of this population are largely untested. However, CMS will closely review variations in benefit design between multiple bids offered by the same sponsor to ensure that they represent appropriate and meaningful differences.

Consequently, CMS will review the set of bids received from a Part D sponsor as a whole. We will apply a reasonableness test to all multiple bid submissions to determine examples of a strong likelihood of incompetence and/or 'gaming,' including, but not limited to:

- ✓ Multiple bid submissions that would fail a reasonableness test (e.g., 4 or more bids for basic benefit packages in one service area, or fewer if the demographics of the

service area would not reasonably support the required minimum enrollment in each plan;

- ✓ Multiple bid submissions based on different formulary drug lists;
- ✓ Multiple bid submissions based on different levels of utilization management control;
- ✓ Multiple bid submissions that reflect a significant unexplained variation in costs between the plans, particularly between plans offered to the group versus the individual market.

CMS will negotiate with plan sponsors to ensure that any multiple bids and benefit packages reflect appropriate and meaningful variations in benefits.

However, in the case of a multiple bid submitter that, once the benchmark is announced, withdraws some or all of its bids in obvious deference to the national benchmark announcement, CMS would—with few exceptions—have to consider any organization taking this actions as either grossly incompetent, failing to negotiate in good faith, or both. This may result in CMS:

- ✓ Disapproving the remaining bids for the current year, or
- ✓ Deciding to terminate an organization's contract for the contract year pursuant to 423.504(b)(4), [422.503(b)(4) for organizations proposing to offer MA plans] or
- ✓ Deciding to non-renew an organization's contract for the following contract year pursuant to 423.504(b)(4). [422.506(b) and 422.510(a) for MA plans]

We would do so on the basis that entities must have "administrative and management arrangements satisfactory to CMS in order to receive a contract," [or, in the case of MA organizations, the rejection of the bid related to the proposed MA-PD plans] as well as pursuant to 423.509(a)(3) and 423.507(b)(1)(i) which allow CMS to either terminate or non-renew a contract if a sponsor no longer meets the requirements of Part 423 for being a contracting organization. [422.506(b), and .510(a)(4) are related MA regulations.]

Question: Can MA regional plans submit more than one bid for basic benefits and subsequently withdraw some or all of them?

Answer: In the case of a multiple bid submitter that, once the MA regional benchmarks are announced, withdraws some or all of its bids in obvious deference to the benchmark announcement, CMS would—with few exceptions—have to consider any organization taking this actions as either grossly incompetent, failing to negotiate in good faith, or both. This may result in CMS—

- ✓ Disapproving the remaining bids for the current year, or
- ✓ Deciding to terminate an organization's contract for the contract year pursuant to 422.510(a), or

- ✓ Deciding to non-renew an organization's contract for the following contract year pursuant to 422.506(b).

This would allow CMS to either terminate or non-renew a contract if a sponsor no longer meets the requirements of Part 422 for being a contracting organization.

Finally, in general CMS would be concerned if an organization submitted multiple MA plan in an area and then withdrew a number of these bids.